

**SOAH DOCKET NO. 453-04-2739.M5  
TWCC NO. M5-04-0560-01**

<b>ROSHAN SHARMA, M.D.,</b>	▪	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	▪	
	▪	
<b>VS.</b>	▪	<b>OF</b>
	▪	
<b>TEXAS MUTUAL INSURANCE</b>	▪	
<b>COMPANY,</b>	▪	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**DECISION AND ORDER**

Roshan Sharma, M.D. (Provider), challenged the decision of an Independent Review Organization (IRO) upholding the denial of 16 separate electric stimulation procedures administered to Claimant from January 20, 2003, through February 21, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of showing that the treatment rendered was reasonable and medically necessary for Claimant’s compensable injury. Therefore, Provider is not entitled to reimbursement.

The hearing convened and closed on October 6, 2004, before Steven M. Rivas, ALJ. Provider appeared and represented himself. Texas Mutual Insurance Company (Carrier) appeared and was represented by Patricia Eads, attorney.

**I. DISCUSSION**

2. Background Facts

Claimant sustained a compensable back injury on \_\_\_\_, and underwent back surgery six months later. Subsequently, Claimant developed a wound infection from the initial surgery, which required further treatment. Eventually, Claimant was diagnosed with a failed back surgery and suffered from back pain as a result. Provider began treating Claimant in 2000 by prescribing various medications to treat Claimant’s back pain. In addition to prescribing medication, Provider administered a series of electric stimulation treatments using a Dynatron instrument.

Carrier denied reimbursement for the Dynatron treatments as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission. The dispute was sent to an IRO, which upheld the denial of reimbursement, and Provider filed a request for hearing before the State Office of Administrative Hearings.

### 3. Applicable Law

The Texas Labor Code contains the Texas Workers= Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers= compensation claims. In particular, TEX. LAB. CODE ANN. ' 408.021(a) provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The statute further states an employee is specifically entitled to health care that Acures or relieves the effects naturally resulting from the compensable injury, promotes recovery; or enhances the ability of the employee to return to or retain employment.@

Under TEX. LAB. CODE ANN. '401.011(19) health care Aincludes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.@

### 4. Evidence and Analysis

Provider had the burden of proof in this matter. Because no credible evidence was presented that supported the efficacy of the Dynatron instrument, and the progress notes did not prove Claimant experienced any notable improvement, the ALJ finds that Provider is not entitled to reimbursement for the disputed services.

Carrier first argued the treatment was not medically necessary due to the lack of literature supporting the efficacy of the Dynatron instrument. In support of this position, Carrier presented testimony from Clark Watts, M.D., and Nicholas Tsourmas, M.D. Both doctors testified that no credible study had ever been performed that supported the use and effectiveness of the Dynatron

instrument. The ALJ found this testimony persuasive considering the extent of experience both doctors possess in the field of neurosurgery. Dr. Tsourmas even commented that the Dynatron instrument should be considered an alternative type treatment with no scientific basis. Additionally, Dr. Tsourmas asserted that the Dynatron instrument is not a recognized routine treatment for back care, failed surgical spine or otherwise.

However, Provider cited a study published in the American Journal of Pain Management, where a group of 20 patients were treated for back pain using procedures similar to the Dynatron instrument.<sup>1</sup> Provider asserted that the study found most of the patients experienced relief, but it did not produce the study. Therefore, the ALJ was unable to determine the efficacy of the Dynatron instrument because no information was presented regarding the makeup of the patient group (age/gender), the number of times each patient was treated, or the manner in which improvement was measured.

Additionally, the disputed treatment was not medically necessary because Provider failed to prove it cured or relieved Claimant's pain symptoms. The only evidence that documented the efficacy of the Dynatron instrument was Claimant's progress notes. The notes generally displayed Claimant's lack of improvement.

On Claimant's first treatment with the Dynatron instrument date of January 20, 2003, she noted that her pain level was a 7 on a scale of 1-10, and that her activity level was between 2-3 on a scale of 1-10. Additionally, Claimant noted that she was able to sleep 5-7 hours-a-night when the treatments began. After the first ten treatments, Claimant's pain level, activity level, and hours of sleep fluctuated slightly, but the treatments offered no lasting relief of her back pain. For example, during Claimant's tenth visit on January 31, 2003, she reported her activity level increased to 6 from 2-3, but her pain level and hours of sleep remained the same as they were after her first visit. Furthermore, Claimant's lack of improvement is evident on her eleventh visit of February 10, 2003. On that date, Claimant's hours of sleep remained at 5 and her activity level had not changed from the prior visit. However, her pain level had increased to a 10 on a scale of 1-10. This marked an increase in pain to a level higher than when Provider first started Claimant on the Dynatron

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<sup>1</sup> According to Provider, the study is located at AJPM Vol.12, No. 1, January 2002.

treatments.

The progress notes for the remaining six visits do not contain a pain level notation. Therefore it is not clear whether Claimant's pain level decreased as a result of using the Dynatron instrument. However, the notes reflected that Claimant did not experience any improvement with her hours of sleep or activity level, which remained the same throughout her entire treatment with the Dynatron instrument.

Another variable noted on the progress notes was the length of time Claimant experienced relief following her treatment with the Dynatron instrument. After her third treatment, Claimant reported feeling two hours of relief following treatment. Following her tenth treatment, Claimant reported relief lasting four-to-five hours. However, this variable fluctuated as well and was noted to have decreased to two hours following her twelfth treatment on February 11, 2003. The remainder of Claimant's progress notes indicated Claimant's relief time varied from three-to-four hours.

Claimant testified at the hearing that her condition improved after using the Dynatron instrument. However, the ALJ did not find her testimony persuasive because it was not supported by the progress notes documented by Provider.

## **II. FINDINGS OF FACTS**

1. Claimant sustained a compensable back injury on \_\_\_\_, and subsequently underwent surgery.
2. Following her back surgery, Claimant developed a wound infection and was ultimately diagnosed with a failed back surgery.
3. Provider, Roshan Sharma, M.D., began treating Claimant in 2000 by prescribing medication to treat Claimant's back pain.
4. On January 20, 2003, Provider began treating Claimant with electronic stimulation using a Dynatron instrument.
5. Provider administered 16 separate treatments with the Dynatron instrument and billed Texas Mutual Insurance Company (Carrier), which denied reimbursement based on its conclusion that the treatments were not medically necessary.
6. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.

7. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing in this case was mailed to the parties on February 4, 2004. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The hearing convened and closed on October 6, 2004, with Administrative Law Judge Steven M. Rivas presiding. Provider appeared and represented himself. Carrier appeared and was represented by Steve Tipton, attorney.
10. Claimant displayed no documented improvement or relief over the course of treatment with the Dynatron instrument.
- 11.** Provider failed to demonstrate that the Dynatron treatment administered from January 20, 2003, through February 21, 2003, was medically necessary to treat Claimant's compensable injury.

### **III. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE ' 148.3.
3. Proper and timely notice of the hearing was effected upon the parties in accordance with TEX. GOV'T CODE ANN. ' 2001.051 and ' 2001.052 and 28 TEX. ADMIN. CODE ' 148.4.
4. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. ' 413.031 and 28 TEX. ADMIN. CODE ' 148.21(h).
6. Under TEX. LAB. CODE ANN. ' 408.021(a)(3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
7. The treatment rendered to Claimant between January 20, 2003, through February 21, 2003, was not medically necessary for treatment of Claimant's compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Provider's request for reimbursement should be denied.

**ORDER**

**IT IS ORDERED THAT** the reimbursement requested by Roshan Sharma, M.D., for the treatment rendered to Claimant from January 20, 2003, through February 21, 2003, is denied.

**SIGNED on November 8, 2004.**

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**STEVEN M. RIVAS  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW JUDGE**